Supreme Court, U. S.
FILED
OCT 17 1979
MICHAEL RODAK, JR., CLERK

IN THE UNITED STATES SUPREME COURT
WASHINGTON, D.C.

CASE NO. 79-833

ROBERT J. KONDRAT
Plaintiff-Appellant
vs.
CITY OF WILLOUGHBY HILLS, et al.
Defendant-Appellees

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
CINCINNATI, OHIO
CASE NO. 77-3405

PETITION FOR WRIT OF CERTIORARI

ROBERT J. KONDRAT, Pro se
29121 Chardon Road
Willoughby Hills, Ohio 44092

JOHN E. SHOOP
LAKE COUNTY PROSECUTOR
47 North Park Place
Painesville, Ohio 44077

BARRY M. BYRON
BAKER, BYRON & HACKENBERG
420 Lakeshore Trust Building
Painesville, Ohio 44077

GEORGE LUTJEN
DAVIS & YOUNG
816 Engineers Building
Cleveland, Ohio 44114

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PETITION FOR WRIT OF CERTIORARI

In accordance with this court's instuctions, and Rule 23 as adopted by the Supreme Court of the United States, Plaintiff-Appellant petitions for a Writ of Certiorari to review judgement of captioned case. As per Rule 23, the following is submitted:

(a) References to official and unofficial reports of opinions delivered in the courts below are:

(i) ORDER AND MEMORANDUM of the United States District Court, Northern District of Ohio, Eastern Division; and (ii) ORDER of the United States Court of Appeals for the Sixth District — copies of both which are appended hereto.

(b) Statement of the grounds on which jurisdiction of this court is invoked shows:

(1) the date of the judgement or decree sought as being June 15, 1979, the time is not indicated; (ii) the date of any order

respecting a hearing, and the date and terms of any order granting an extension of time is not applicable herein; and (iii) the statutory provision believed to confer on this court's jurisdiction to review the judgement or decree in question by Writ of Certicrari is Article III of the Constitution of the United States which created the Supreme Court of the United States as a constitutional court giving judicial power to all cases, in law and equity, that arises under the Constitution.

(c) The questions presented for review are as follows:

(i) Can absolute immunity be granted to officials for actions conducted during the investigative and/or administrative stages?

(ii) Can absolute immunity be granted to officials such as mayors and Board of Elections heads? If so, where

does absolute immunity stop?

(iii) Is a city or county considered as persons and be subject to liability for actions that infringe upon the constitutional rights of citizens?

(iv) Is incarceration without plumbing and/or light considered as cruel and unusual punishment?

(v) Can justice be expected to prevail when justice itself is a defendant?

(d) The constitutional provisions, treaties, statutes, ordinances, or regulations which the case involves -- all are Amendments to the Constitution of the United States, and are quoted in part as follows:

(i) First - the right to petition the government for a redress of grievances.

(ii) Fifth - not to be deprived of life, liberty or property, without due process of law.

(iii) Sixth - the right to be informed of the nature and cause of the accusation.

(iv) Eighth - cruel and unusual punishment.

(v) Fourteenth - nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

(e) Statement of the Case containing the facts and material to the consideration of the questions presented:

On or about August, 1976, Plaintiff-Appellant began the circulation of petitions seeking the recall of various public officials of the City of Willoughby Hills, Ohio. Various defendants engaged in activities to obstruct, cut short and infringe on Plaintiff's right as quaranteed by the First Amendment. The activities included: (i) threats to sue any citizen who had signed or would sign recall petitions; (ii) invited citizens to come to City Hall to have signatures removed; and (iii) tampered with the petitions by crossing out names. To punish Plaintiff, and

others, and to prevent a second recall, the Law Director of the City of Willoughby Hills, in concert with others, fabricated criminal activity which caused Plaintiff to be arrested, incarcerated and made to stand trial. The alleged criminal activity was trumped-up from a deposition subjected upon the Plaintiff, without benefit of the Miranda warning, or without being told the charges being investigated. The Lake County Board of Elections collaborated with the City of Willoughby Hills to infringe upon Plaintiff's right under the First Amendment by refusing to act on the petition tampering as reported to it on or about September 13, 1976. This obstructed the petitioning process by cutting short the statutory grace period time. Plaintiff alleges that on or about December 22, 1976, the Lake County Sheriff's Department arrested Plaintiff, delivered same to

Lake County Jail whereupon Plaintiff was incarcerated for over six days, first in a cell without plumbing, then in a cell without light, then in a cell with felons. Plaintiff alleges this to be cruel and unusual punishment, for an alleged petition irregularity. This is in violation of the Eighth Amendment which forbids cruel and unusual punishment. Plaintiff alleges that on or about December 22, 1976, Plaintiff was arraigned in Lake County Court of Common Pleas, before Judge John Parks, who refused to give Plaintiff the specifics of Plaintiff's arrest, stating that they had to be secured through an attorney. The Judge's refusal was a violation of the Fifth Amendment, which deprived Plaintiff of liberty without due process of law; a violation of the Sixth Amendment, which did not provide Plaintiff the right to be informed of the nature and cause of the

accusation; and a violation of the Fourteenth Amendment, which did not provide Plaintiff equal protection of the laws. Plaintiff alleges that during a period between the months of August and December, 1976, the Lake County Prosecutor's office collaborated with the City of Willoughby Hills to secure indictments by knowingly using fabricated criminal activity and by deliberately suppressing exculpatory evidence. The subsequent arrest and incarceration of Plaintiff, as a result of the conspiratorial acts of the Lake County Prosecutor's office, infringed upon Plaintiff's right under the First Amendment; the right to petition the government for a redress of grievances.

(f) Not applicable.

(g) Basis for federal jurisdiction in the court of first instance is Article III of the Constitution of the United States.

This vests the judicial power in not only the Supreme Court but also in such other inferior courts as the Congress may establish. District courts are inferior constitutional courts.

(h) Argument amplifying the reasons relied on for the allowance of the writ is threefold:

(i) The Court of Appeal's ORDER affirming the District Court's ORDER has decided a federal question in a way in conflict with applicable decisions of this court. The inferior courts have extended absolute immunity into the qualified immunity zone known as the investigative and/or administrative area, which is not an integral part of the judicial process. Furthermore the inferior courts have extended what appears to be absolute immunity to encompass officials such as mayors and Board

of Election heads.

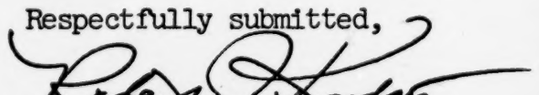
(ii) The inferior court's ORDER has recognized the city and county as being immune, not subject to liability for actions that infringe upon the constitutional rights of citizens.

(iii) The inferior court's ORDER fails to recognize cruel and unusual punishment on the basis of the conditions that the incarcerated are subjected to. Instead the inferior court has excused this infringement as good faith performance of duties.

(i) Appended herein to the petition are the opinions as delivered by the inferior courts and as instructed by paragraph (a) of Rule 23.

(j) Appended herein to the petition are the inferior court's ORDERS.

Respectfully submitted,



 ROBERT J. KONDRAT, Pro se

(k) PROOF OF SERVICE

A copy of the foregoing PETITION FOR WRIT OF CERTIORARI was mailed by regular United States mail, first class postage prepaid, on this 27th day of November, 1979, to the following:

JOHN E. SHOOP
Lake County Courthouse
47 North Park Place
Painesville, Ohio 44077

BARRY M. BYRON
420 Lakeshore Trust Building
Painesville, Ohio 44077

GEORGE LUTJEN
816 Engineers Building
Cleveland, Ohio 44114

Robert J. Kondrat
ROBERT J. KONDRAT

FILED
1977 JUN 13 PM 3 59
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

GREEN, S. J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT J. KONDRAT	)	
	)	
Plaintiff	)	Case No. C77-464
	)	
v.	)	ORDER
	)	
CITY OF WILLOUGHBY HILLS, et al	)	
	)	
Defendants	)	

UPON CONSIDERATION of defendants' motion to dismiss plaintiff's complaint,

IT IS HEREBY ORDERED that the said motions are granted and the complaint is dismissed for failure to state a claim upon which relief can be granted.

Ben C. Green
United States Senior District Judge

June 13, 1977

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CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT J. KONDRAT	)	
	)	
Plaintiff	)	Case No. C77-464
	)	
v.	)	MEMORANDUM
	)	
CITY OF WILLOUGHBY HILLS, et al	)	
	)	
Defendants	)	

GREEN, S. J.:

This pro se action is brought based upon alleged deprivation "of rights as secured by the Constitution of the United States of America, under 42 U.S.C., Sections 1983 and 1985 and the First, Sixth, Eighth and Fourteenth Amendments to the U. S. Constitution." The named defendants are City of Willoughby Hills, Ohio, Lake County of Ohio, Judge John M. Parks, John E. Shoop and Edwin H. Cunningham. While not named as a party defendant in the caption of the complaint, it appears that E. W. Mastrangelo has also been served as a party defendant by virtue of his relationship to the Lake County Board of Elections. It further appears that defendant Parks is sued in his capacity as a judge of the Court of Common Pleas of Lake County, Ohio, defendant Shoop is sued by virtue of acts done as a member of the

Lake County Prosecutor's Office and defendant Cunningham is sued as the Sheriff of Lake County.

The action is presently before the Court on defendants' motions to dismiss the complaint. While such motions raise issues regarding immunity and want of federal jurisdiction, inherent in them is the general question of the sufficiency of the complaint to state a claim upon which relief can be granted.

At the outset, it is clear that plaintiff has no claim against the municipality and county under §1983. Not being natural persons they have no potential liability thereunder. Kenosha v. Bruno, 412 U.S. 507 (1973). For the reasons that will appear hereafter it is not necessary for the Court to determine defendants' contentions that the individuals are entitled to the protection of that immunity. The Court does note, however, that generally judges have an absolute immunity for acts done in their official capacity and that such immunity can extend to prosecuting attorneys. Imbler v. Pocntman, 424 U.S. 409 (1976). A lesser immunity extends to other officials acting in their public capacity.

The complaint itself is not particularly clear as to what constitutional rights plaintiff claims have been infringed and in what manner. It does appear that it relates to matters pertaining to an election petition

campaign, which culminated in petitioner's indictment by a grand jury in Lake County, Ohio, and subsequent confinement in the Lake County jail. There are allegations pertaining to claimed deprivation of rights at plaintiff's arraignment.

It is settled law that barring extraordinary circumstances the federal courts are not to interfere in unresolved state criminal proceedings. Hoffman v. Pursue, Ltd., 420 U.S. 592 (1975); Younger v. Harris, 401 U.S. 37 (1971). The United States Supreme Court has recently broadened the doctrine of Younger v. Harris in holding that under principles of comity the federal courts should not entertain actions inextricably intertwined with pending or imminent state civil actions. Trainor v. Hernandez, _____ U.S. _____, 45 Law Week 4535 (1977); Juidice v. Vail, _____ U.S. _____, 45 Law Week 4269 (1977).

Therefore, insofar as it appears from the face of the complaint that this suit relates to unresolved state proceedings, criminal or civil, it is inappropriate for determination at this time. Moreover, the Sixth Circuit Court of Appeals has recently spoken out several times condemning the practice of bringing into the federal courts matters which are essentially state questions under the guise of civil rights suits. Sullivan v. Brown, 544 F. 2d 279

(1976); Smith v. Martin, 542 F. 2d 688 (1976); Louisville Area Inter-Faith Committee v. Nottingham Liquors, 542 F. 2d 652 (1976). Insofar as this action involves a dispute as to election petitions such matters are fully and properly within the purview of the Ohio courts.

While the Court recognizes that pro se pleadings are entitled to the broadest construction, even under such a view the Court cannot find in plaintiff's complaint an actionable claim upon which relief can be granted under 42 U.S.C. §§1983 and 1985(3) at this time.

The motions for dismissal will be granted upon behalf of all defendants.

Ben C. Green
United States Senior District Judge

June 13, 1977

No. 77-3405

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

FILED

JUN 15 1979

JOHN P. HEHMAN, Clerk

ROBERT J. KONDRAT,

Plaintiff-Appellant

v.

CITY OF WILLOUGHBY HILLS, OHIO, MELVIN G. SCHAEFER; LAKE COUNTY OF OHIO, E. W. MASTRANGELO, JUDGE JOHN M. PARKS, JOHN E. SHOOP and EDWIN H. CUNNINGHAM,

Defendants-Appellees

O R D E R

Before: WEICK and MERRITT, Circuit Judges; PHILLIPS, Senior Circuit Judge.

Plaintiff appeals from the dismissal of his pro se complaint, founded upon 42 U.S.C. § 1983 (1976), for failure to state a claim upon which relief could be granted. Rule 12(b)(6), FED. R. CIV. P. We affirm.

Plaintiff, a resident of Willoughby Hills, Ohio, participated in a petition drive, the object of which was to recall certain elected city officials. The Clerk of the City Council found the petitions defective under state law. The organizers then sought a writ of mandamus from the Ohio Supreme Court ordering the Clerk to place the recall on the November 1976 ballot, but that Court agreed that the petitions were defective and denied relief. Subsequently, plaintiff was indicted in state court on several counts of perjury for allegedly making false statements under oath concerning the

procedures he followed in gathering signatures for the petition drive. After his arrest, plaintiff was promptly arraigned, but he refused at that time to sign a personal recognizance bond or otherwise to take the steps necessary to secure his release. As a consequence, plaintiff was held in the county jail for six days. Plaintiff was later acquitted on the state criminal charges.

The complaint alleges that various actions by the defendants violated plaintiff's rights under the civil rights laws and the First, Fifth, Sixth, Eighth and Fourteenth Amendments. More specifically, the complaint asserts that the defendants unlawfully interfered with the petition drive, denied plaintiff due process of law at his arraignment, and subjected plaintiff to cruel and unusual punishment during his six-day incarceration. The named defendants are the City of Willoughby Hills, Lake County, Judge John M. Parks, Lake County Prosecutor John Shoop, and Lake County Sheriff Edwin Cunningham.

Construed in the light most favorable to the plaintiff, the allegations of the complaint against the Judge and Prosecutor are barred by the absolute immunity from suit such officials enjoy for actions taken in their official capacities. Pierson v. Ray, 386 U.S. 547 (1967); Imbler v. Pachtman, 424 U.S. 409 (1976). Similarly, the allegations against Sheriff Cunningham were properly dismissed for failure to state an actionable claim

because they are based entirely upon actions he undertook in the good faith performance of his duties. See Procunier v. Navarette, 434 U.S. 555, 561 (1978).

Relying on Monroe v. Pape, 365 U.S. 167 (1961), and Kenosha v. Bruno, 412 U.S. 507 (1973), the District Court dismissed the complaint against the municipal defendants on grounds that they were not "persons" subject to suit under the civil rights laws. Despite the Supreme Court's intervening decision in Monell v. Department of Social Services, 436 U.S. 658 (1978), overruling Monroe v. Pape, supra, we nevertheless rule that the claims against the City and County were also properly dismissed. Reading the complaint as indulgently as possible, we do not think that it alleges facts sufficient to state a cause of action under the civil rights laws. Moreover, at the hearing before this Court, plaintiff, who argued his cause pro se, was unable to supplement the bare allegations of his pleadings during a searching inquiry from the bench concerning the petition drive and the circumstances surrounding his incarceration in the Lake County jail.

Accordingly, it is ORDERED that the order of the District Court dismissing the complaint be, and hereby is, affirmed.

ENTERED BY ORDER OF THE COURT

John P. Hehman
Clerk

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